

Senate Bill No. 633

CHAPTER 57

An act to amend Section 2954 of the Civil Code, relating to mortgages.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 633, Wright. Mortgages: impound accounts.

Existing law prohibits requiring an impound, trust, or other type of account for payment of property taxes, insurance premiums, or other purposes relating to the property as a condition of a real property sale contract or a loan secured by a deed of trust or mortgage on real property containing only a single-family, owner-occupied dwelling, except as specified.

This bill would include among those exceptions sales where a loan is made in compliance with the requirements for higher priced mortgage loans established in Regulation Z, as defined, whether or not the loan is a higher priced mortgage loan, and where a loan is refinanced or modified in connection with a lender's homeownership preservation program or a lender's participation in such a program sponsored by a federal, state, or local government authority or a nonprofit organization.

The people of the State of California do enact as follows:

SECTION 1. Section 2954 of the Civil Code is amended to read:

2954. (a) (1) No impound, trust, or other type of account for payment of taxes on the property, insurance premiums or other purposes relating to the property shall be required as a condition of a real property sale contract or a loan secured by a deed of trust or mortgage on real property containing only a single-family, owner-occupied dwelling, except: (1) where required by a state or federal regulatory authority; or (2) where a loan is made, guaranteed, or insured by a state or federal governmental lending or insuring agency; or (3) upon a failure of the purchaser or borrower to pay two consecutive tax installments on the property prior to the delinquency date for such payments; or (4) where the original principal amount of such a loan is (i) 90 percent or more of the sale price, if the property involved is sold, or is (ii) 90 percent or more of the appraised value of the property securing the loan; or (5) whenever the combined principal amount of all loans secured by the real property exceeds 80 percent of the appraised value of the property securing the loans; or (6) where a loan is made in compliance with the requirements for higher priced mortgage loans established in Regulation Z, whether or not the loan is a higher priced mortgage loan; or (7) where a

loan is refinanced or modified in connection with a lender's homeownership preservation program or a lender's participation in such a program sponsored by a federal, state, or local government authority or a nonprofit organization. Nothing contained in this section shall preclude establishment of such an account on terms mutually agreeable to the parties to the loan, if, prior to the execution of the loan or sale agreement, the seller or lender has furnished to the purchaser or borrower a statement in writing, which may be set forth in the loan application, to the effect that the establishment of such an account shall not be required as a condition to the execution of the loan or sale agreement, and further, stating whether or not interest will be paid on the funds in such an account.

An impound, trust, or other type of account for the payment of taxes, insurance premiums or other purposes relating to property established in violation of this subdivision is voidable, at the option of the purchaser or borrower, at any time, but shall not otherwise affect the validity of the loan or sale.

(2) For the purposes of this subdivision, "Regulation Z" means any rule, regulation, or interpretation promulgated by the Board of Governors of the Federal Reserve System and any interpretation or approval issued by an official or employee duly authorized by the board to issue interpretations or approvals dealing with, respectively, consumer leasing or consumer lending, pursuant to the Federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601 et seq.).

(b) Every mortgagee of real property, beneficiary under a deed of trust on real property or vendor on a real property sale contract upon the written request of the mortgagor, trustor or vendee shall furnish to the mortgagor, trustor or vendee for each calendar year within 60 days after the end of such year an itemized accounting of moneys received for interest and principal repayment and received and held in or disbursed from an impound or trust account, if any, for payment of taxes on the property, insurance premiums or other purposes relating to the property subject to the mortgage, deed of trust or real property sale contract. The mortgagor, trustor or vendee shall be entitled to receive one such accounting for each calendar year without charge and shall be entitled to additional similar accountings for one or more months upon written request and on payment in advance of fees as follows:

(1) Fifty cents (\$0.50) per statement when requested in advance on a monthly basis for one or more years.

(2) One dollar (\$1) per statement when requested for only one month.

(3) Five dollars (\$5) if requested for a single cumulative statement giving all the information described above back to the last statement rendered.

If the mortgagee, beneficiary or vendor transmits to the mortgagor, trustor or vendee a monthly statement or passbook showing moneys received for interest and principal repayment and received and held in and disbursed from an impound or trust account, if any, the mortgagee, beneficiary or vendor shall be deemed to have complied with this section.

No increase in the monthly rate of payment of a mortgagor, trustor or vendee on a real property sale contract for impound or trust accounts shall be effective until after the mortgagee, beneficiary or vendor has furnished the mortgagor, trustor or vendee with an itemized accounting of the moneys presently held by it in the accounts, and a statement of the new monthly rate of payment, and an explanation of the factors necessitating the increase.

The provisions of this section shall be in addition to the obligations of the parties as stated by Section 2943 of this code.

Every person who willfully or repeatedly violates this subdivision shall be subject to punishment by a fine of not less than fifty dollars (\$50) nor more than two hundred dollars (\$200).

(c) As used in this section, “single-family, owner-occupied dwelling” means a dwelling which will be owned and occupied by a signatory to the mortgage or deed of trust secured by such dwelling within 90 days of the execution of such mortgage or deed of trust.